IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5016 OF 2007

Ravi Lunawat] .. Petitioner

Versus

1. Maharashtra State Electricity Distribution Co.Ltd. & 5 ors.] .. Respondents

Mr. S.S. Kulkarni for the petitioner.

Mr. L.M. Acharya for the respondents No.2 & 3.

Mr. V.A. Sonpal, AGP, for the respondents No.4 & 6.

CORAM: S.B. MHASE &
D.G. KARNIK, JJ.

DATED: 15TH OCTOBER, 2007

P.C. :

1. Heard learned counsel for the petitioner and the respondents.

2. By this Petition, the petitioner in effect claims a mandamus that his tender bid should be accepted by awarding the contract for revamping of 33/11 KV substations. Petitioner and one M/s.Kastum Engineers were the only two bidders. The bid of the petitioner and M/s.Kastum Engineers was opened and both the bids were found to be at par. They were, therefore, called

for negotiations. At the stage of negotiations, the petitioner discovered that M/s.Kastum Engineers had made a bid at par excluding service tax. In other words, M/s.Kastum Engineers had agreed not to charge the service tax in addition to the tender amount. The petitioner had made a bid and stated that he would charge the service tax. According to the petitioner, though his bid, which contemplated reimbursement to him of the service tax, was higher, the bid made by M/s.Kastum Engineers amounted to variation of the terms of contract and, therefore, bid of M/s.Kastum Engineers ought to have been rejected in toto and the petitioner being the sole tenderer in question, his tender should have been accepted. He, therefore, prayed for mandamus that his tender bid should be considered for acceptance by the respondent No.1.

3. Though the petitioner has worded his prayer in a camouflaged and an indirect way, the petitioner in effect is seeking a mandamus to award a contract to him. As there were only two tenders if one has been disqualified, issuance of a Writ directing the respondent No.1 to consider petitioner’s tender would virtually amount to grant of the tender to the petitioner. This cannot be done. It is settled position of law that no mandamus can be issued to award

a contract unless a contract has been wrongly and illegally awarded to somebody else. The government or a government body always has a right to cancel the entire tender process and invite fresh tenders if the circumstances so require.

4. Though the bid of M/s.Kastum Engineers amounted to a small variation in the terms of the contract, that variation was for the benefit of the respondent No.1 inasmuch as M/s.Kastum Engineers had agreed to bear the burden of the service tax. It was, therefore, open to the respondent No.1 to consider the bid of M/s.Kastum Engineers as it was more favourable to respondent No.1. This is especially true when both the petitioner and Kastum Engineers were invited for negotiations for further reducing rates or modifying the terms.

5. There is one more reason why we are not inclined to interfere at this stage. The initial bidding process has been cancelled by the respondent No.1. Fresh tender bids are invited with some variations in the terms and technical specifications. The counsel for the petitioner submitted that the variation in technical specifications is only nominal and with a view to exclude the petitioner. M/s.Kastum

Engineers as well as the petitioner have made a bid in the second tender. The petitioner having participated in the process of the second tender cannot now challenge the bidding process in the first tender which has been cancelled.

6. We also notice that M/s.Kastum Engineers, though was a co-tenderer, has not been joined as a party to the present Petition. It is a necessary party. That is yet another ground for not entertaining the Petition.

7. Accordingly, the Writ Petition is rejected summarily. Interim order stands vacated. The request made by the petitioner for continuation of the interim order is rejected.

Sd/-
[D.G. KARNIK, J.]

Sd/-
[S.B. MHASE, J.]